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No. 80-2035

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

ELECTRONIC DATA SYSTEMS CORPORATION IRAN,

Petitioner,

—against—

THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, THE MINISTRY OF HEALTH AND WELFARE OF THE GOVERNMENT OF IRAN, THE GOVERNMENT OF IRAN, DONALD T. REGAN, THE SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA and THE UNITED STATES OF AMERICA,

Respondents.

On Petition For a Writ of Certiorari To The United States Court of Appeals For the Fifth Circuit Before Judgment

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF

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Respondents.

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

Citibank, N.A., The Chase Manhattan Bank, N.A., Manufacturers Hanover Trust Company and European-American Bank (the "Banks") respectfully move this Court for leave to file the accompanying brief in this case as *amici curiae.*

The Banks have an interest in the subject matter in this case in that they are holding in excess of $1 Billion for the account of Iran and various Iranian entities. The United States has ordered the Banks to transfer these Iranian assets in order to implement the January 19, 1981 executive agreement with Iran which resolved the hostage crisis. However, the Banks as well as many other garnishees have been served with judicial orders of attachment which direct them to continue to hold the Iranian assets.

The Banks are forced with a choice of liability to attaching creditors if they transfer the Iranian assets as ordered by the

United States, or sanctions imposed by the United States if they fail to transfer the assets. Neither the Petitioner in this case nor any other party before this Court is faced with the dilemma confronting the Banks. The Banks have no reason to believe that any party before this Court is in a position to present the argument set forth in the following brief.

Accordingly, it is respectfully requested that the Banks be given leave to file the following brief as *amici curiae.*

Dated: New York, New York
June 3, 1981

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BRIEF *AMICI CURIAE*

INTRODUCTION

Citibank, N.A., The Chase Manhattan Bank, N.A., Manufacturers Hanover Trust Company and European-American Bank (the "Banks") respectfully submit this brief as *amici curiae* in connection with the Court's consideration of the Petition of Electronic Data Systems Corporation Iran ("EDS") for a writ of certiorari.

The Banks hold for the account of Iran and various Iranian entities in excess of $1 Billion and have received judicial orders of attachment in over 100 cases. However, notwithstanding the court orders of attachment, the Executive Branch of the United States government has ordered the Banks to transfer the Iranian assets implementing the January 19, 1981 executive agreement with Iran which resolved the hostage crisis.

This case does not present the critical issue whether the judicial orders of attachment prevent the Banks from complying with the Executive's order to transfer the assets. Other cases* are ripe for review by this Court, however, and do present the necessary issue which we hope will be brought to the Court for a final decision before the July 19, 1981 deadline for the United States to fulfill its obligations to cause the transfer of Iranian assets held by domestic banks.

THE CRITICAL ISSUE IS WHETHER EXISTING ORDERS OF ATTACHMENT PREVENT THE BANKS AND OTHER GARNISHEES FROM TRANSFERRING IRANIAN ASSETS AS ORDERED BY THE PRESIDENT.

In order to implement the executive agreement as required by July 19, 1981, the United States must "act to bring about the transfer to the Central Bank [to be selected by Iran and the United States], . . . of all Iranian deposits and securities in U.S. banking institutions in the United States . . . ." Declaration of the Government of the Democratic and Popular Republic of Algeria, par. 6. The substantial portion of those Iranian assets is held by various banks in New York, including the banks represented by the undersigned attorneys. However, the banks

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*_American International Group, Inc. v. Islamic Republic of Iran,_ No. 80-02791 (D.C. Cir. May 22, 1981) ("AIG"); _Chas. T. Main International, Inc. v. United States,_ No. 81-1176 (1st Cir. May 22, 1981) ("Main"). In the United States Court of Appeals for the Second Circuit on consolidated interlocutory appeal, 96 cases were "remanded to Judge Duffy [in the Southern District of New York] with instructions to join the United States as a party in a single case in which issues raised by the Iranian Agreement and the Presidential Orders are squarely presented and to proceed with confirmation hearings in this case alone." _New England Merchants National Bank v. Iran Power Generation and Transmission Company et al.,_ Nos. 80-6254 _et seq.,_ slip op. at 10 (2d Cir. Apr. 9, 1981). While the Court of Appeals retained jurisdiction, there has as yet been no decision on remand.

are holding these assets not only subject to Executive Order 12170 which blocked their transfer, and Executive Order 12294 which now directs their transfer to the Federal Reserve Bank of New York, as fiscal agent of the United States, but also subject to orders of attachment issued by the United States District Court for the Southern District of New York and the New York State courts in over 100 cases.

The Executive Branch has taken the position that the orders of attachment have been nullified by Executive Order and therefore are ineffective to prevent transfer of the Iranian assets. The Banks and other garnishees are faced with civil and criminal sanctions if they do not transfer the assets. However, the federal and state courts in New York have not yet decided motions by the United States to vacate the orders of attachment.

The garnishee banks thus are caught directly between conflicting mandates of the judicial and executive branches. The garnishees need a dispositive decision in an appropriate case whether the pending orders of attachment prevent them from transferring the Iranian assets.

Prompt resolution of the important constitutional issues inherent in this conflict between two branches of our government is vital to the national interest, and required before July 19, 1981 to prevent a default by the United States under the executive agreement with Iran. A proper case for such consideration is one involving orders of attachment on the garnishee banks which remain in place despite the Executive Orders to the contrary. *AIG* and *Main* are such cases and squarely present the fundamental issue whether the actions of Presidents Carter and Reagan have a legal basis under the Constitution, as well as in the powers granted them by Congress under the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*

The garnishees are demonstrably in need of a resolution of the conflicting judicial and executive directives regarding the domestic Iranian assets.

The *EDS* case does not comprehend these issues, so that a decision on the merits in this case will leave open the issue that impedes conclusion of the settlement agreements. Yet, issuance of the writ in this case is likely to stall progress in the other cases, while the lower courts await such guidance as they may receive from the Court's decision here.

Accordingly, we submit that the request for extraordinary relief in this case in the form of a Petition for Writ of Certiorari before Judgment in the Court of Appeals be denied. We would, however, urge acceptance and expedited determination of an appropriate case presenting the governing issue stated above of the President's power to enter and implement the Iranian executive agreements.

Dated: New York, New York
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I, Michael M. Maney, a member of the Bar of this Court, do certify that I caused three copies each of the annexed Motion For Leave To File Brief *Amici Curiae* And Brief to be served this 3rd day of June 1981, by mail, postage prepaid, upon the following counsel:

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